

STATE OF TEXAS §
COUNTIES OF ARANSAS §
SAN PATRICIO AND NUECES §
CITY OF ARANSAS PASS §

On this the 5th day of October, 2009 the City Council of the City of Aransas Pass convened in a Regular Council Meeting being open to the Public at the regular meeting place thereof in the City Hall and notice of said meeting giving the time, place, date and subject hereof having been posted and prescribed by Chapter 551 of the Texas Government Code with the following attendance to wit constituting a quorum.

PRESENT: Tommy Knight, Mayor
Jay Attaway, Mayor Pro Tempore
Vickie Abrego, Council Member
Phillip Hyatt, Council Member
Karen Mayer, Council Member

ABSENT:

ADMINISTRATIVE
PERSONNEL PRESENT: Reggie H. Winters, City Manager
Allen Lawrence, City Attorney
Ada Owens, City Secretary

ADMINISTRATIVE
PERSONNEL ABSENT:

STAFF PRESENT: Bill Haines, Asst. Police Chief
Frank Truitt, City Inspector
Paul Alvarado, Public Works Director

OTHERS PRESENT: Jim & Alpha Covington, Sandy Kubeck, Donald & Jeanie Brummett, David Underbrink/Naismith Engineering, Rosemary Vega/Chamber of Commerce, Patty Gilden, Rose Mary Upton, Jennifer Merkle, Donald Smith, Jackie & David Everett, Bill & Michel Smith, Phil Reynolds, Jimmie Nabours, Michael Cary/Progress Newspaper, Maryanne Tiemann

There may have been others present who did not sign in.

ITEM 1. CALL MEETING TO ORDER.

Mayor Knight called the meeting to order at 7:00 p.m. on October 5, 2009 and introduced the new City Manager Reggie Winters to the audience.

ITEM 2. INVOCATION AND PLEDGE OF ALLEGIANCE TO THE UNITED STATES FLAG.

Council Member Abrego gave the invocation. Mayor Knight led the Pledge of Allegiance to the United States flag.

ITEM 3. CONSIDER AND ACT ON APPROVAL OF MINUTES OF SEPTEMBER 21, 2009.

Mayor Pro Tem Attaway made the motion to approve the minutes of September 21, 2009. Council Member Mayer seconded the motion and the motion carried unanimously.

ITEM 4. PROCLAMATION FOR WHITE CANE AWARENESS AND PEOPLE WITH DISABILITIES WEEK.

The Proclamation for White Cane Awareness and People with Disabilities Week was read and presented to Maryanne Tiemann.

ITEM 5. CONSIDER AND ACT ON REQUEST OF LAURA SIMANK TO BE REINSTATED TO THE PLANNING AND ZONING COMMISSION.

Mayor Knight stated Laura Simank had withdrawn her request to be reinstated to the Planning and Zoning Commission. No action taken.

ITEM 6. PRESENTATION BY MICHAEL ARNOLD, CPA REGARDING GASB 45 - GOVERNMENT ACCOUNTING STANDARDS BOARD STATEMENT 45, ACCOUNTING AND FINANCIAL REPORTING BY EMPLOYERS FOR POSTEMPLOYMENT BENEFITS OTHER THAN PENSIONS.

Michael Arnold stated the Governmental Accounting Standards Board (GASB) sets the

rules for all State and Local governments and had passed a rule that any governmental entity that provided post employment benefits, such as health care, must have an actuarial study and record a liability on their audit for the amount of the liability. He stated the State does not require local entities to do the study. He stated the American Institute of Certified Public Accountants has stated if an entity does not have the study done, any auditor has to express a "qualified opinion" on the entity's financial statements which would say the entity's financial statements are fairly stated except the (GASB 45) liability was not recorded. He stated he had spoken to the City's financial advisor, Ryan Cunningham with Southwest Securities and Mr. Cunningham concurred with him that the City should have the study done because there was a possibility that the City's bond rating could be affected. He stated he had furnished the name of an Actuary since he could not do the actuarial study. He stated he estimated the study would cost \$6,000.00 to \$10,000.00. He stated once the study was done, the City would be required to have the study done every three years.

ITEM 7. **CONSIDER AND ACT ON CONTRACTING WITH MICHAEL ARNOLD, CPA/PLLC FOR AUDITING SERVICES FOR THE CITY OF ARANSAS PASS' 2008-2009 FISCAL YEAR AUDIT.**

Mayor Pro Tem Attaway made the motion to contract with Michael Arnold, CPA PLLC for auditing services for the City of Aransas Pass' 2008-2009 Fiscal Year audit. Council Member Abrego seconded the motion and the motion carried unanimously.

ITEM 8. **ITEM 8 WAS TABLED AT THE SEPTEMBER 21, 2009 COUNCIL MEETING AND MUST BE UNTABLED BEFORE CONSIDERATION.**
CONSIDER AND ACT ON APPROVING THE ARANSAS PASS CHAMBER OF COMMERCE 2009-2010 BUDGET.

Mayor Pro Tem Attaway made the motion to untable Item 8 for consideration. Council Member Mayer seconded the motion and the motion carried unanimously.

Rosemary Vega, CEO of the Aransas Pass Chamber of Commerce presented the 2009-2010 budget to the Council.

Council Member Mayer stated the line item "Shrimporee" did not have a breakdown of the costs and income.

Ms. Vega stated she only had the totals, but would meet with the Council in a workshop to give them further information.

Council Member Abrego asked Ms. Vega had the Chamber changed their fiscal year to match the City's fiscal year?

Ms. Vega stated yes, the budget reflected the Chamber's change of their accounting year from January thru December to October thru September to coincide with the City's fiscal year.

Council Member Abrego made the motion to approve the Aransas Pass Chamber of Commerce 2009-2010 budget. Mayor Pro Tem Attaway seconded the motion and the motion carried unanimously.

ITEM 9. **ITEM 9 WAS TABLED AT THE SEPTEMBER 21, 2009 COUNCIL MEETING AND MUST BE UNTABLED BEFORE CONSIDERATION.**
CONSIDER AND ACT ON APPROVAL OF A PUBLICITY AND TOURISM AGREEMENT BETWEEN CITY OF ARANSAS PASS AND ARANSAS PASS CHAMBER OF COMMERCE.

Mayor Pro Tem Attaway made the motion to untable Item 9 for consideration. Council Member Mayer seconded the motion and the motion carried unanimously.

Rosemary Vega stated the Agreement between the Chamber of Commerce and the City was for 70% of the Hotel/Motel Tax to promote Aransas Pass. She stated the Agreement with the City had not changed from years past.

Mayor Pro Tem Attaway instructed Ms. Vega to make sure the Council received the reports due from the Chamber of Commerce on a quarterly basis.

Mayor Pro Tem Attaway made the motion to approve a Publicity and Tourism Agreement between the City of Aransas Pass and Aransas Pass Chamber of Commerce. Councilmember Hyatt seconded the motion and the motion carried unanimously.

ITEM 10. **PUBLIC HEARING ON THE REQUEST OF DONALD SMITH AND JENNIFER MERKLE FOR A CONDITIONAL USE PERMIT TO OPEN A KID'S INDOOR AMUSEMENT FACILITY, LANDBLOCK 540, LOT 4, 5 AND NW 46' OF LOT 6, N.**

COMMERCIAL ST., ARANSAS PASS, TEXAS, ARANSAS COUNTY. THE PROPERTY IS ZONED GENERAL BUSINESS (GB).

City Attorney Allen Lawrence opened the Public Hearing at 7:16 p.m. on the request of Donald Smith and Jennifer Merkle for a Conditional Use Permit to open a kid's indoor amusement facility, Landblock 540, Lot 4, 5 and NW 46' of Lot 6, N. Commercial St., Aransas Pass, Texas, Aransas County. He stated the property was zoned General Business; all notices were given; the Planning and Zoning Commission had previously met on the request and recommended City Council's approval. He asked Donald Smith to come forward and speak for his request.

Donald Smith stated he and Ms. Merkle wanted to open a place for kid's to go. He stated he had experience with this (type of establishment) in the past. He stated the facility would be organized, supervised and give the kids the atmosphere they wanted. He stated the facility had video games, pool table, foosball table, and a snack bar.

Mr. Lawrence stated it was his understanding the business was already in operation.

Mr. Smith stated they were (in business) in the beginning but there was some confusion. He stated when they (Mr. Smith and Ms. Merkle) read the Ordinances they did not realize (a permit was required) because the ordinances did not say anything about their type of business and gave them the impression that the zoning was okay. He stated they immediately ceased operations when they were informed by the Inspections Department that a Conditional Use Permit (CUP) was required for the business.

Mr. Lawrence asked did the Council have any questions?

Council Member Abrego asked had Mr. Smith met with the Fire Chief concerning the number of occupants allowed in the building?

Mr. Smith stated he thought the building had been certified for 100 people when he had a business there before, but had not met with the Fire Chief on this business and it would not be a problem to do so.

Council Member Mayer asked would they be cooking food or would the food be prepackaged?

Mr. Smith stated the food would be prepackaged and they already had health cards for prepackaged food.

Council Member Mayer asked what times would they be open?

Mr. Smith stated they would be open after school until 10:30 p.m.

Council Member Abrego asked what about the (liability) insurance?

Mr. Smith stated they were waiting for the approval (of the CUP) before purchasing liability insurance. He stated they had an insurance agent and had received quotes for the insurance.

Council Member Abrego asked were they going to have parent volunteers as chaperones?

Mr. Smith stated yes, when they have dances for the teenagers. He stated they did have one dance and parents were chaperones.

Council Member Abrego asked Mr. Smith what was his backup plan, when not enough parents showed up (to chaperone)?

Mr. Smith stated there were three adults on site constantly. He stated he did not think there would be over 40 kids on site at one time.

Council Member Abrego expressed her concern regarding lack of adult supervision for the children.

Mr. Smith stated their goal was to have the supervision of one adult for every ten children.

Council Member Mayer asked Mr. Smith what was the age limit (of the children)?

Mr. Smith stated parents could bring in children of any age as long as the parents stayed with the very young children. He stated the age limit would be 18 years old, but he would not throw anyone out that was over that age.

The City Attorney asked was there anyone else to speak for the request? There were

none.

Mr. Lawrence asked was there anyone present who was opposed to the application?

Jimmie Nabours stated he was the next door neighbor. He stated he had complained to the Police Department regarding Mr. Smith's business. He stated there had been drinking on the premises after hours; there was no sign; and tall grass on the property. He stated Mr. Smith and Ms. Merkle were nice people but he did not believe they were up to it. He stated their taxicab business was the same way.

Mr. Lawrence asked Mr. Nabours what was the complaint he had made to the Police Department?

Mr. Nabours stated someone backed over his gas pipe that caused a gas leak. He stated people were going into the building with alcohol, it looked like a kid to him, but after the Police investigated his complaint they said there was no one under age drinking alcohol on Mr. Smith's property. He stated he then told the Police there was gambling on Mr. Smith's property. He stated Mr. Smith had said (in his presentation to the Council for his Conditional Use Permit) that there would be gambling on the premises occasionally. He stated Mr. Smith keeps his property in such disrepair that it diminishes his (Mr. Nabours') property value. He stated he was against Mr. Smith's request and the Council should check out his complaints against Mr. Smith's property and activity on the property. He stated he had already contacted TABC (Texas Alcoholic Beverage Commission) with his complaints.

Mr. Lawrence asked Mr. Smith would he like to respond?

Mr. Smith stated he was flabbergasted as he had spoke to Mr. Nabours several times and told him if he (Mr. Nabours) ever had a problem all he had to do was contact him. He stated there had been adults that brought in a couple of beers while they were helping with the building. He stated they did not gamble, but did play cards, dominoes, and other games like that. He stated the building was not open to the public (at that time) and would not be open to the public (during those activities). He stated he would be happy to work with his neighbor.

Mr. Lawrence asked Mr. Smith how about the yard?

Mr. Smith stated he did need to cut the grass. He stated he would mow the grass tonight or tomorrow.

Council Member Mayer asked Mr. Smith are adults using the building or would adults be using the building since there have been some (adults) in the building?

Mr. Smith stated they were not going to tell anyone they could not come in, but (the business) is designed for kids.

Council Member Mayer asked Mr. Smith was he going to allow adults to bring alcohol in (the building)?

Mr. Smith stated no.

Council Member Mayer asked Mr. Smith why was he allowing alcohol on the premises now?

Mr. Smith stated because the business was not open. He stated when the permit was approved no alcohol would be allowed on the premises.

Mayor Knight stated Mr. Smith should be aware if the Council approved his request for a conditional Use Permit, the Council could revoke the permit at any time.

Mr. Smith stated he understood.

Council Member Abrego stated referring to Mr. Smith's yard, that a business should be kept neat and clean, not only for the business but it also reflects on the City.

Mr. Lawrence asked were there any more comments from the Council? Hearing none he closed the Public Hearing at 7:30 p.m.

Mr. Lawrence stated if the Council's desire was to grant the permit, the Planning and Zoning Commission recommended a two-year permit, but from the public hearing just completed, he suggested the Council grant the permit upon the conditions that the business abide by the curfew hours; provide general liability insurance; comply with fire code occupancy regulations; have no loud noise; have one chaperon for every ten kids, no alcohol on the premises, keep the yard neat and clean and no gambling on the premises.

CONSIDER AND ACT ON THE REQUEST OF DONALD SMITH AND JENNIFER MERKLE FOR A CONDITIONAL USE PERMIT TO OPEN A KID'S INDOOR AMUSEMENT FACILITY, LANDBLOCK 540, LOT 4, 5 AND NW 46' OF LOT 6, N. COMMERCIAL ST., ARANSAS PASS, TEXAS, ARANSAS COUNTY.

Councilmember Mayer made the motion to approve the request of Donald Smith and Jennifer Merkle for a Conditional Use Permit to open a kid's indoor amusement facility, Landblock 540, Lot 4, 5 and NW 46' of Lot 6, N. Commercial St., Aransas Pass, Texas, Aransas County with the conditions the Conditional Use Permit be for six months, the business abide by the curfew hours; provide general liability insurance; comply with fire code occupancy regulations; have no loud noise; have one chaperon for every ten kids, no alcohol on the premises, keep the yard neat and clean and no gambling on the premises. Council Member Hyatt seconded the motion and the motion carried unanimously.

CITIZENS' COMMENTS.

Sandy Kubeck thanked the City for spraying for mosquitoes.

ADJOURNMENT OF MEETING.

Council Member Mayer made the motion to adjourn the meeting. Mayor Pro Tem Attaway seconded the motion and the motion carried unanimously.

Mayor Knight adjourned the meeting at 7:34 p.m.

Tommy Knight, Mayor

ATTEST:

Ada Owens, City Secretary